

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (NPD) No.1430 of 2015

Mr.K.Mani

...

Petitioner

Vs

Ms.G.Saraswathi

...

Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 r/w Sec. 115 of CPC against the judgment and decree made in RCA No.225 of 2012, dated 12/11/2014 on the file of VIII Court of Small Causes, Chennai confirming the fair and decretal order made in RCOP No.609 of 2010 dated 29/2/2012 by the XVI Small Causes Court, Chennai.

For Petitioner : Mr.S.Saravanan

For Respondent : Mr.Gigi Pramod

ORDER

This Civil Revision Petition is filed against judgment and decree made in RCA No.225 of 2012, dated 12/11/2014 on the file of VIII Court of Small Causes, Chennai confirming the fair and decretal order made in RCOP No.609 of 2010 dated 29/2/2012 by the XVI Small Causes Court, Chennai.

2. The petitioner is the tenant and the respondent is the landlord in RCOP No.609 of 2010 filed before VIII Judge, Small Causes Court, Chennai. The respondent filed the above RCOP against the petitioner for fixation of fair rent at Rs.13,391/- per month in respect of petition premises. According to the respondent, the petition premises is located in a very important and valuable area of Mount Road, Pudupet which is in the heart of city of Chennai. The petition premises is a Type I Class – A1 construction. The age of the building is 25 years and therefore the depreciation is 1% for one year but the maximum depreciation of any building is 60%. The plinth area of the petition premises exclusively used and occupied by the petitioner is 400 sq.ft. in the first floor and apportionment area under occupation of the petitioner is 199.50 sq.ft. There are also open balcony and common area measuring about 65 sq.ft. exclusively under the occupation of the petitioner. Further, the cost of construction of the petition portion will be Rs.500/- per sq.ft. The petition portion has got all the three basic amenities like electricity, water supply and drainage. The petition premises commands all the external and locational advantages such as bus stop, market, shops, banks, hospitals, clinics, dispensaries, hotels, restaurants, theatres, schools, colleges, High court, post

offices, commercial complexes, government offices, railway station, new secretariat, temples, etc. within the same vicinity. The land value of the petition premises is not less than Rs.1,75,00,000/-. Taking into account, cost of land, construction and amenities provided in the petition premises, he prayed for fixation of fair rent at Rs.13,391/- per month.

3. The petitioner filed counter and denied all the averments made by the respondent. According to the petitioner, he is not tenant of entire portion as alleged by the respondent. He is occupying only 194 sq.ft. in the first floor. A common bath room and toilet measuring about 32 sq.ft (approx.) is situated in the first floor and the same is for the usage of other tenants also. The petitioner is none other than the respondent's sister's husband. The petition premises is at the banks of the coovam river at Varadharajapuram (Nariyangadu) in Chindadripet village. The wastage of government hospital reaches the coovam river very near to the petition premises and comparing it with Mount Road and terming it as "heart of Chennai" is highly unjustifiable. It is a slum area. Earlier, the schedule caste members who are the ancient people in the said area formed a society namely "Nariyangadu Co-operative Credit Society and requested the British Government to

allot the land to them for their living. The entire land was acquired by Government for sanitary condition. Over the years, the Schedule Caste members began to sell the land to other persons and now the area is over populated. The respondent just enjoying the status of landlady in the eyes of law and harrassing the petitioner by using her status. Still there is no proper sanitation facility in the area. The building is more than 31 years old and the petitioner occupies only 194 sq.ft. The cost of construction attributed to the petition premises was only Rs.100/- per sq.ft. Basic amenities are not provided by the respondent. The petition is filed with ulterior intention to disturb the petitioner and the present petition is second such effort. In the year 1998, the petitioner filed petition before XIII Small Causes Court in RCOP No.2553/1998 for owner's occupation and the same was decreed against her on 17.02.2000. The appeal preferred against the said order in RCA No.492 of 2000 was also dismissed as withdrawn as per compromise, at the intervention of relatives. The petitioner agreed to pay a sum of Rs.800/- per month as rent. Hence, the present rent of Rs.800/- per month for the petition premises is correct and fair on the basis of actual facilities and prayed for dismissal of the petition.

4. Before the learned Rent Controller, the respondent examined her Engineer as PW1 and marked two documents as Exs.P1 & P2. The petitioner examined his engineer as RW1 and marked seven documents as Exs.R1 to R7. The learned Rent Controller, considering the pleadings, oral and documentary evidence, type, age of the building, amenities, cost of construction, plinth area, apportionment area, land value, basic amenities and schedule I amenities, fixed the fair rent at Rs.3,910/- per month.

5. Against the said order dated 29.02.2012 made in RCOP No.609 of 2010, the petitioner/tenant filed RCA No.225 of 2012 and the respondent/landlady filed RCA No.548 of 2012 before the VIII Judge, Small Causes Court, Chennai. The learned Appellate Authority, independently considering the materials on record and the order of the learned Rent Controller, by common judgment dated 12.11.2014, dismissed both the appeals confirming the order of the learned Rent Controller dated 29.02.2012 in RCOP No.609 of 2010 confirming the fair rent at Rs.3,910/- per month.

6. Against the said judgment dated 12.11.2014 made in RCA No.225 of 2012, confirming the fair and decretal order made in

RCOP No.609 of 2010 dated 29.02.2012, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

8. From the order of the learned Rent Controller and Appellate Authority, it is seen that Courts below accepted the particulars furnished by the petitioner with regard to age and plinth area. It is admitted that all three basic amenities are available in the petition premises. The petitioner did not deny the availability of schedule 1 amenity in counter statement and R.W.1 examined by the petitioner also did not deny the availability of the said facilities. With regard to the apportionment area, the petitioner has not raised any grounds disputing the apportionment area fixed by the Courts below. In view of the said fact, the conclusion of the Courts below with regard to the age, basic amenities, schedule 1 amenities are confirmed.

9. The main contention of the learned counsel for the petitioner is that the respondent has not produced any sample sale deeds with regard the value of the land. The petitioner has

produced three sample sale deeds with regard to the value of the land. The petitioner has produced the sale deeds in the year 2007 with regard the properties in the same street and same area. The Courts below considering the sale price mentioned in the said sale deeds and by giving 10% appreciation, arrived at the value of Rs.25,00,000/- instead of fixing the value at Rs.24,00,000/-.

10. The learned counsel for the petitioner relied on the Full Bench Judgment and Division Bench judgment of this Court reported respectively in :

(i) 2006 (2) CTC 433 (Sakthi and Co., through its Partner Veeranam Vs. Shree Desigachary):

"14. The methods of valuation for ascertaining the market value, as suggested in the above decisions, are as follows:

(1) Opinion of experts

(2) The price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value.

(3)A number of years purchase of the actual or immediately prospective profits of the lands acquired.”

(ii) (2004) 2 SCC 283 (Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun, through its Secretary Vs. Bipin Kumar and another):

“8.However, there is evidence of high potentiality. The increase of 15% given by the High Court cannot, therefore, be said to be unreasonable. Of course, the 15% increase has to be on Rs.15.40 which is the figure shown in the sale deed. It cannot be on Rs.120 as wrongly taken by the High Court. The High Court also erred in considering only three years' increase whereas in fact there is four years' difference between the respondents' sale deed and the acquisition proceedings. Thus taking an increase of 60% over the price of Rs.24.64 per sq yard. We, accordingly, set aside the orders of the Reference Court and the High Court and fix the value at the rate of Rs.24.64 per sq yard. The respondent will also be entitled to solatium and other statutory benefits under the Land Acquisition Act, 1894.”

11. The Courts below have fixed the market value at Rs.55,00,000/- per ground without any basis. The said contention of the learned counsel for the petitioner is not correct. The learned Rent Controller taking into consideration the locational advantages

of the petition premises, has fixed the market value at Rs.55,00,000/- per ground. The value mentioned in the sample sale deeds are only guideline value and do not reflect the correct market value. The property is situated in Pudupet, Egmore. Taking into consideration the locational advantages, the learned Rent Controller has fixed the market value at Rs.55,00,000/- per ground. The same has been confirmed by the learned Appellate Authority. In view of the fact the courts below have fixed the market value of the land taking into consideration the locational advantages, the two judgments relied on by the learned counsel for the petitioner do not advance the case of the petitioner.

12. The learned counsel for the petitioner contended that petition premises is a residential building and fair rent can be fixed only at 9% and not at 12% as fixed by the courts below. The said contention is acceptable and the order of the courts below is modified only with regard to fixing fair rent at 12% of total cost to 9% of total cost. In the result, the order and judgment of the courts below are modified as follows -

Fair rent calculations :-**Cost of construction:**

Built-up plinth area

(i) First floor RCC 239 sq.ft. @ Rs.357/-	Rs. 85,323/-
(ii) Common area RCC 90.50 sq.ft. } @ Rs.357/- }	Rs. 32,308/-
(iii) Common cantilevered balcony } share in the first floor 8.43 sq.ft. } @ Rs.150/- }	Rs. 1,264/-
(iv) Staircase are share 31.62 sq.ft. } @ Rs.300/- }	Rs. 9,486/-
	Rs.1,28,381/-
Basic Amenities @ 15%	Rs. 19,257/-
	Rs.1,47,638/-
	=====
Depreciation @ 1% for 35 years (.703) (1,47,638 x .703)	Rs.1,03,789/-

Land value :

361.12/3 = 120.37	
55,00,000 x 120.37 / 2400	Rs.2,75,847/-
	Rs.3,79,636/-
Schedule-I amenities @ 3%	Rs. 11,389/-
	Rs.3,91,025/-
	=====

Fair rent for residential building @ 9% per annum ... Rs.35,192.25

Fair rent for one year ... Rs.35,192/-

Fair rent per month [35192/12] ... Rs. 2,932.68

Rounded off to ... Rs.2,935/-

Thus, the fair rent fixed by the courts below at Rs.3,910/- is modified to Rs.2,935/-.

13. In the result, this Civil Revision Petition is partly allowed by fixing the fair rent at Rs.2,935/- per month payable by the petitioner to the respondent, from the date of filing of the petition, modifying the judgment and decree dated 12/11/2014 made in RCA No.225 of 2012 by confirming the fair and decretal order made in RCOP No.609 of 2010 dated 29/2/2012. No costs.

07.02.2018

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Index : Yes

To

1.The VIII Judge,
Small Causes Court, Chennai.

2.The XVI Judge,
Small Causes Court, Chennai.

V.M.VELUMANI, J.

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